

**82-1578**

NO. \_\_\_\_\_

IN THE SUPREME COURT OF THE  
UNITED STATES

Office-Supreme Court, U.S.  
FILED  
MAR 22 1983  
ALEXANDER L STEVAS,  
CLERK

OCTOBER TERM, 1982

STATE OF ALABAMA,

Petitioner

vs.

OVERTON DAVID JOHNSON,

Respondent

PETITION FOR WRIT OF CERTIORARI  
TO THE ALABAMA SUPREME COURT AND  
ALABAMA COURT OF CRIMINAL APPEALS

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ATTORNEYS FOR PETITIONERS

QUESTIONS PRESENTED

Whether an interpretation placed by the Alabama Court of Criminal Appeals upon Alabama's version of the Uniform Criminal Extradition Act, which interpretation requires that a request for interstate extradition by means of an affidavit be accompanied by a warrant issued pursuant to the affidavit, is contrary to the dictate of 18 U.S.C. § 3182 and therefore unconstitutional.

PARTIES

In the Circuit Court of Etowah County, Alabama, and the Alabama Court of Criminal Appeals the parties were Overton David Johnson, Respondent herein, and the State of Alabama, Petitioner herein.

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OPINIONS BELOW

The order of the Circuit Court of Etowah County, Alabama, denying the petition for writ of habeas corpus of the Respondent herein is not reported but is submitted as Appendix "A" hereto.

The judgment and opinion of the Alabama Court of Criminal Appeals has not yet been reported but is submitted as Appendix "B" hereto.

The denial by the Alabama Court of Criminal Appeals of the application for rehearing of the State of Alabama is not reported but is submitted as Appendix "C" hereto.

The denial by the Alabama Supreme Court of the petition for writ of certiorari of the State of Alabama is not reported but is submitted as Appendix "D" hereto.

### JURISDICTION

The Order of the Alabama Supreme Court denying the petition for writ of certiorari of the State of Alabama was issued on January 21, 1983. This petition is filed within sixty days of that date.

The jurisdiction of this Honorable Court is invoked under 28 United States Code, Section 1257(3).

### CONSTITUTIONAL PROVISIONS INVOLVED

Article IV, Section 2 of the United States Constitution provides in pertinent part as follows:

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 3182 provides in  
pertinent part as follows:

Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, District or Territory to which such person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of the arrest, the prisoner may be discharged.

Section 15-9-31, Code of Alabama (1975) provides in pertinent part as follows:

No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing and accompanied by a copy of an indictment found, or by an information supported by affidavit, in the state having jurisdiction of the crime or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereon. The indictment, information or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state, and the copy must be authenticated by the executive authority making the demand, which shall be *prima facie* evidence of its truth.

STATEMENT OF THE CASE

On January 15, 1981, the Governor of Alabama issued a rendition warrant for the arrest of the Respondent, Overton David Johnson, the basis of which was a demand for the extradition of the Respondent made by the Governor of North Carolina to the Governor of Alabama (R. p. 75). This warrant was executed on January 21, 1981 (R. p. 76). The Respondent challenged the legality of his incarceration by Petition for Writ of Habeas Corpus filed on January 21, 1981, in the Circuit Court of Etowah County, Alabama (R. p. 56).

A hearing on the Respondent's Petition was held on August 25, 1981, at which time the State of Alabama introduced into evidence the North Carolina Demand and allied papers including:

(a) a North Carolina warrant for the Respondent's arrest issued on December 2, 1980 (R.p. 89);

(b) an affidavit by Jack LeBeau, made before a magistrate on December 17, 1980, setting forth facts on which the charge of false pretense was based (R. p. 83);

The Petition for Writ of Habeas Corpus was denied on October 12, 1981 (R. p. 67; see Appendix "A").

On October 12, 1982, the Alabama Court of Criminal Appeals reversed the decision of the Circuit Court of Etowah County, Alabama, in denying the Petition for Writ of Habeas Corpus, holding that the requirements of § 15-9-31, Code of Alabama (1975), Alabama's version of the Uniform Criminal Extradition Act, had not been met (see opinion in Appendix "B"). The Court specifically held that because the warrant of arrest was issued fifteen (15) days before the affidavit of Jack

LeBeau, the Respondent was not lawfully charged with a crime in North Carolina, and therefore that the case should be reversed under Batties v. Stae of Alabama. 389 So.2d 957 (Ala.Crim.App. 1980), cert. den. 389 So.2d 960 (Ala. 1980), cert. den., 452 U.S. 920 (1981).

On October 26, 1982, the State of Alabama filed an application for rehearing, which application was denied on November 23, 1982 (see Appendix "C").

On December 7, 1982, the State of Alabama filed a Petition for Writ of Certiorari to the Alabama Supreme Court, which petition was denied on January 21, 1983 (see Appendix "D").

### STATEMENT OF THE FACTS

The question presented for review is one of the sufficiency of certain documents, previously referred to in the Statement of the Case, to support extradition. Because the question is purely legal, the Petitioner considers further statement of the facts to be unnecessary and therefore respectfully declines to make further statement.

### SUMMARY OF THE ARGUMENT

The interpretation placed upon § 15-9-31, Code of Alabama (1975), by the Alabama Court of Criminal Appeals effectively requires that where a demanding state attempts to extradite an accused by means of copy of an affidavit signed before a magistrate, it must include a copy of a warrant issued subsequent to and based upon the affidavit. This interpretation is contrary to the language of the con-

trolling Federal statute, 18 U.S.C. § 362, and therefore renders the Alabama statute unconstitutional because it places an illegal restraint on interstate extraditon.

#### ARGUMENT

It is generally recognized that because interstate extradition is a right of the State derived from the Federal Constitution, federal law is paramount in extradition proceedings. People ex rel. Dimas v. Shimp, 83 Ill. App.3d 150, 403 N.E.2d 750 (1980); State ex rel. Sieloff v. Golz, 80 Wis. 225, 258 N.W.2d 700 (1977); State v. Parish, 242 Ala. 7, 5 So.2d 828 (1941); 35 C.J.S. Extradition, § 3 (1960). A state in enacting legislation to implement the federal constitutional mandates may permit extradition under less stringent standards than those mandated by federal law, but may not

enact or enforce standards in derogation of the federal rights of other states to obtain the return of persons accused of crimes. People ex rel. Dimas v. Shimp, supra; State ex rel. Sieloff v. Goiz, supra; State v. Parish, supra. Therefore state laws which place burdens on extradition beyond those permitted by federal law, whether those laws are legislatively or judicially imposed, and unconstitutional and void. People ex rel. Dimas v. Shimp, supra; State ex rel. v. Sieloff v. Goiz, supra; State v. Parish, supra.

The present federal statute controlling interstate extradition, 18 U.S.C. § 3182, provides in pertinent part as follows:

Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District or Territory to which such person has fled, and

produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, District or Territory to which suc<sup>h</sup> person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear.

[Emphasis added]

The above statute makes no requirement that when extradition is attempted by means of an affidavit before a magistrate, the affidavit must be accompanied by a warrant issued pursuant to and subsequent to the affidavit.

Section 15-9-31, Code of Alabama (1975), a section of Alabama's version of the Uniform Criminal Extradition Act, provides as follows:

No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing and accompanied by a copy of an indictment found, or by an information supported by affidavit, in the state having jurisdiction of the crime or by a copy of an affidavit made before a magistrate thereon, together with a copy of any warrant which was issued thereon. The indictment, information or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state, and the copy must be authenticated by the executive authority making the demand, which shall be *prima facie* evidence of its truth.

[Emphis added]

The interpretation placed upon this statute by the Alabama Court of Criminal Appeals effectively requires that (a) an

affidavit made before a magistrate must be accompanied by a warrant, and (b) the warrant must be issued upon and subsequent to the affidavit. This interpretation, besides being contrary to the clear language of § 15-9-31, has the effect of placing a burden on interstate extradition not provided for in 18 U.S.C. § 3182 and therefore void. Indeed, an interpretation requiring any warrant under the Uniform Criminal Extradition Act has been specifically rejected as unconstitutional in the courts of other states. State ex rel. Sieloff v. Golz, supra; Application of Williams, 76 Idaho 173, 279 P.2d 882 (Sup.Ct. 1955); Ex parte Riccardi, 63 Ariz. 180, 203 P.2d 627 (1949); People ex rel. Gates v. Mulcahy, 392 Ill. 498, 65 N.E.2d 21 (1946). The issuance of a warrant based

on an affidavit is neither necessary nor material to extradition. Application of Williams, supra. Therefore the warrant should be treated as mere surplusage. State ex rel. Sieloff v. Golz, supra. Because the affidavit submitted in the instant case was sufficient to support extradition, the Alabama Court of Criminal Appeals should have affirmed the trial court's decision based on the affidavit and likewise treated the warrant as surplusage.

The instant case appears to be one of first impression before this Honorable Court, and for this reason alone certiorari should be granted. More importantly, however, is the fact that the interpretation by the Alabama Court of Criminal Appeals is placed upon Alabama's version of a uniform statute that has

been widely adopted in form very similar to Alabama's version.<sup>1</sup> Because this decision may serve as precedent in the courts of other states which have enacted this uniform law, and may therefore be used to impede further the rights of demanding states to extradition, this Honorable Court should grant this petition for writ of certiorari and reverse the decision of the Alabama Court of Criminal Appeals.

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<sup>1</sup> It appears that 48 states, along with Puerto Rico and the Virgin Islands have adopted some version of the Uniform Criminal Extradition Act. 11 Uniform Laws Ann. p. 5 (Supp. 1983, p. 15).

CONCLUSION

In conclusion the Petitioner respectfully submits that this case presents an important question of Federal Constitutional and statutory law which has not been but which ought to be decided by this Honorable Court. For this reason the Petitioner prays that this Honorable Court will issue the writ of certiorari and review the decision and opinion of the Alabama Court of Criminal Appeals , and on such review will reverse the decision of said court.

Respectfully submitted,

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ALABAMA

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CERTIFICATE OF SERVICE

I, Joseph G. L. Marston, III, an Assistant Attorney General of Alabama, a member of the Bar of the Supreme Court of the United States and one of the Attorneys for the State of Alabama, Petitioner, do hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 1983, I did serve the requisite number of copies of the foregoing on the Honorable Robert H. King, Attorney for Respondent, 757 Chestnut Street, Gadsden, Alabama 35901, by placing said copies in the United States Mail, first class postage prepaid.

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